

# **PURCHASE OF SERVICES CONTRACT**

Document Revision 12.15.19

for Services Provided in Calendar Year **2021**

## **SECTIONS INCORPORATED WITHIN CONTRACT BASE**

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## **ALSO INCORPORATED WITH CONTRACTUAL AGREEMENT**

ATTACHMENTS, as applicable under Section S  
CURRENT LICENSURES and/or CERTIFICATIONS

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### A. PARTIES TO THE CONTRACT

1. This contract is between the PROVIDER listed on Purchase of Service Parties Summary page; and the Jefferson County Human Services Department, whose business address is 1541 Annex Road, Jefferson, WI 53549, hereinafter referred to as the PURCHASER.
2. The contract administrator for the Provider is listed on the POS Parties Summary. The contract administrator for the Purchaser is Cathy Swenson, Advanced Accountant. In the event that either of the contract administrators is unable to administer this contract, contracting parties are to be notified accordingly.

### B. CONTRACT PERIOD

1. This contract will be in effect no earlier than January 1, 2021, and no later than December 31, 2021. Specific effective dates of this contract are as listed on the Contract Appendix A

### C. SERVICES TO BE PROVIDED

1. This contract and any applicable appendices and/or amendments to the contract are subject to the terms and conditions set forth in State/County Contracts covering Income Maintenance, W-2 programs, Social and Mental Hygiene Services, Community Youth and Family Aids, and other programs. Purchaser agrees to purchase for and Provider agrees to provide to eligible clients services as listed on the Contract Appendix A.

### D. PAYMENT FOR SERVICES PROVIDED

1. Amounts to be paid to the Provider by the Purchaser will be in accordance with rates, services, and recipients as listed on the Contract Appendix A.
2. The Provider is to submit billing statements to the Purchaser within three (3) days after the month of service. If received and approved in a timely manner, payment will be made to Provider by the twentieth (20<sup>th</sup>) of the month. Billings not received by January 31 after the close of the contract year will not be honored for payment.
3. The Provider shall return to Purchaser excess funds paid beyond actual allowable expenses/costs. The Provider will adhere to the Wisconsin Department of Health and Social Services' Accounting Principles and Allowable Costs Policies Manual.
4. The Purchaser will make payments to the Provider only for actual service provided, except for authorized absenteeism, unless otherwise mutually agreed upon between the Provider and the Purchaser.
5. Advance payments to the Provider are not allowed under this contract.
6. Medical Providers are to only bill the Purchaser services for which there is no third party payment source and no potential for recovery from first party payment sources. Purchaser is to be billed the lesser of "Usual and Customary" charges or actual charges.
7. Where applicable, when using the new Residential Provider Rating Tool a contract will be initiated based on the rate determined by the rate setting tool. The provider then has thirty (30) days from date of admission in placement to provide an Alternate Care Operating Budget based on actual costs they are incurring for that particular client, not the assigned rate, if a budget has not already been submitted. The Operating Budget upon submission will be reviewed and approved by Jefferson County Human Services once any outstanding questions are answered. If at the time of the budget submission, the actual costs of supporting the client/clients are less than the rates established with the client rate setting tool or cannot be substantiated, Jefferson County Human Services has the ability to revise the contracted rate back to the 30 day due date of the Budget. Failure to submit a timely budget could result in delay of payment until the budget is received. The client's level of need for services will be reviewed on a regular basis.

### E. BILLING AND COLLECTION PROCEDURES

1. Providers other than general hospitals, who have been delegated responsibility for billing of services provided under this contract, will do so in accordance with Section 46.03(18) of the Wisconsin Statutes and Wisconsin Administrative Code HSS 1. Fees collected will be deducted from amounts paid under this contract, unless reimbursement amounts as shown represent the Purchaser share of the charges only.

### F. ELIGIBILITY STANDARDS FOR RECIPIENTS OF SERVICE

1. Eligibility of individuals to receive services under this contract will be determined by the Purchaser. Individuals are entitled to the right of an administrative hearing concerning eligibility, and the Provider will inform them accordingly.

### G. INDEMNITY AND INSURANCE

1. The Provider agrees that it will at all times during the existence of this contract indemnify the Purchaser against any and all loss, damages, and costs or expenses which the Purchaser may sustain, incur or be required to pay, including those arising from death, personal injury, or property loss resulting from participating in or receiving care, goods and/or services furnished by the Provider under this contract. The Purchaser agrees that it will at all times during the existence of this contract indemnify the Provider against any and all loss, damages, and costs or expenses which the Provider may sustain, incur, or be required to pay which are caused by the Purchaser.
2. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination of this contract.
3. The Provider agrees that to protect itself as well as the Purchaser under the indemnity provision set forth in the preceding paragraph, the Provider will at all times during the term of this contract keep in full force and effect a liability insurance policy issued by a company authorized to do business in the State of Wisconsin and licensed by the Office of the Commissioner of Insurance. The types of insurance coverage and minimum amounts shall be as follows:

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- Comprehensive General Liability: minimum amount \$1,000,000
- Auto Liability (if applicable): minimum amount \$1,000,000
- Professional Liability (if applicable): minimum amount \$1,000,000 per occurrence and \$3,000,000 for all occurrences in one (1) year.
- Umbrella Liability (as necessary): minimum amount \$1,000,000

Such insurance shall be primary with the Purchaser named as an added insured. Provider acknowledges that its indemnification liability to the Purchaser is not limited by the limits of this insurance coverage.

4. The Provider will furnish written verification of the existence of such insurance upon request of the Purchaser. In the event of any action, suit, or proceedings against the Purchaser upon any matter indemnified against, Purchaser shall notify the Provider by registered mail within five (5) business days.

### **H. INDEPENDENT CONTRACTOR**

1. Nothing in this contract shall create a partnership or joint venture between the Purchaser and the Provider. The Provider is at all times acting as an independent contractor and is in no sense an employee, agent or volunteer of the Purchaser.

### **I. AFFIRMATIVE ACTION AND CIVIL RIGHTS COMPLIANCE**

1. The Provider, where applicable, agrees to submit to the Purchaser a current copy of the Subrecipient Civil Rights Compliance Action Plan (CRC) for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Titles VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981, and the Americans with Disabilities Act (ADA) of 1990, and the Wisconsin Fair Employment Act.
2. No otherwise qualified person shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any manner on the basis of race, color, national origin, sex, disability, or age. This policy covers eligibility for and access to service delivery, and treatment in all programs and activities.
3. No otherwise qualified person shall be excluded from employment, be denied the benefits of employment, or otherwise be subject to discrimination in employment in any manner or term of employment on the basis of age, race, religion, color, sex, national origin or ancestry, handicap (as defined in Section 504 of the Rehabilitation Act and the Americans with Disabilities Act), physical condition, developmental disability (as defined in Section 51.01(5) of the Wisconsin Statutes), arrest or conviction record (in keeping with Section 111.32 of the Wisconsin Statutes), sexual orientation, marital status, or military participation.
4. The Provider shall post the Equal Opportunity Policy, the name of the Equal Opportunity Coordinator, and the discrimination complaint process in conspicuous places available to applicants and clients of services, applicants for employment, and employees. The complaint process will be in accordance with standards and will be made available in languages as appropriate and formats understandable to applicants, clients, and employees.
5. The Provider agrees that it will employ and/or make available resources for communication with non-English speaking clients when applicable, train staff in human relation techniques and sensitivity to cultural patterns where appropriate, and make arrangements and/or modifications to meet the needs of handicapped persons.
6. The Purchaser will take appropriate steps to ensure compliance to affirmative action and civil rights requirements.

### **J. INITIATION OF CONTRACT**

1. Contractual relationship between the Provider and the Purchaser will begin as stated on the Contract Appendix A, upon signature of both parties on the Contract Appendix A.
2. The original contract for any given calendar year will include the Purchase of Services Contract base, a signed Contract Appendix A, and applicable appendices. The Provider must attach copies of current licensures and certifications pertaining to services provided under the contract.
3. Most Adult Alternate Care Providers (e.g. CBRF, AFH, RCAC) must submit an "Annual Operating Budget Worksheet" and a "Staffing Worksheet". If required, but not submitted, payments due under this contract will be withheld until this information is submitted and accepted.

### **K. AMENDMENTS TO CONTRACT**

1. Amendments to the contract will be executed via amended Contract Appendix A, to incorporate items such as the addition of clients authorized for services, rates to bill, service additions, etc. Letters or emails will not be considered sufficient documentation to initiate changes to an existing signed contract. Contract changes must follow contracting guidelines. Signatures by the authorized representatives will signify acceptance of the items added or changed, and will accordingly supersede previously signed Contract Appendix A.

### **L. RENEGOTIATION OF CONTRACT**

1. This contract or any part thereof must be renegotiated if there are significant changes in services provided, federal or state laws or regulations or court action, or monies available affecting the substance of this contract.

### **M. TERMINATION OR REVISION OF CONTRACT**

1. Failure to comply with any material aspect of this contract is considered to be a breach of contract, and may be cause for revision, suspension, or termination of the contract.
2. Revisions of this contract must be agreed to by the Provider and the Purchaser in the form of an amendment to the contract and/or an amended Contract Appendix A, signed by their authorized representatives.
3. The Provider must notify the Purchaser in writing whenever it is unable to provide the quality or quantity of services

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in accordance with this contract. Upon such notification, the Purchaser and Provider shall determine whether such inability will require a revision or termination of this contract.

4. Unless terminated immediately for breach or as set forth in 5 or 6 below, this Contract may be terminated by either party at any time, for any reason, upon a 30-day written notice to the other party.
5. When a child transitions into the adult system of care, this Jefferson County Human Services Contract will terminate on the day the child becomes disenrolled from the children's waiver program and enrolled into the new adult long-term care program (such as Family Care, Partnership or IRIS).
6. Contracts for crisis stabilization beds terminate automatically on the day the person returns home, leaves placement at the facility or becomes enrolled into Family Care, Partnership or IRIS.
7. Upon termination, the Purchaser's liability shall be limited to the costs incurred by the Provider up to the date of termination. If the contract was terminated for reasons other than non-performance by the Provider, including services no longer being provided to authorized eligible recipients, payment may be made to the Provider for its actual allowable costs in an amount determined by mutual agreement of the Provider and the Purchaser. If the Purchaser terminates the contract for the Provider's breach, the Provider may be liable for any additional costs the Purchaser incurs for replacement goods and/or services.
8. It is agreed by the parties that nothing in this Contract, including but not limited to indemnification and duty to defend clauses, in any way constitutes a waiver or estoppel of the Purchaser or its insurer, of its right to rely upon the limitations, defenses, privileges, limitations of liability or immunities contained within Wisconsin law, including but not limited to those contained within Wisconsin Statutes 893.80, 895.52 and 345.05. To the extent that indemnification or duty to defend is available and enforceable, neither the Purchaser nor its insurer shall be liable in indemnity or contribution for an amount greater than the limits of liability for claims against counties established by Wisconsin law. To the extent that any provision of this Contract is found by any court of competent jurisdiction to conflict with any such legal protection, then whichever protections, either legal or contractual, provide a greater benefit to the Purchaser shall apply, unless the Purchaser elects otherwise.

### **N. RESOLUTION OF DISPUTES**

1. Any disputes arising through the course of this contract may be appealed in accordance with the terms and conditions of this contract and/or Chapter 68 of the Wisconsin Statutes.

### **O. RECORDS**

1. The Provider will maintain such records and financial statements as required by state and federal laws, rules, and regulations, or as prescribed by the Purchaser.
2. The Provider will allow inspection of records and programs, insofar as permitted by state and federal laws, by representatives of the Purchaser and/or applicable state and federal agencies, in order to confirm the Provider's compliance with the specifications of this contract and funding requirements. Having an independent audit does not limit the authority of the Purchaser to conduct or arrange for other audits or review of federal or state programs.
3. The use or disclosure by any party of any information concerning eligible recipients of service for purposes not connected with the administration of the Provider's or Purchaser's responsibilities under this contract is prohibited, except with the informed written consent of the eligible client or the client's legal guardian or court order.
4. In the event of the termination of the contract by either party, the Provider shall, as requested by the Purchaser, provide the Purchaser with copies of any and/or all records in Provider's custody for Purchaser supported clients.

### **P. REPORTING**

1. The Provider will comply with all reporting requirements of the Purchaser, as well as reporting requirements in accordance with state and federal rules and regulations, including, but not limited to, submission of operating budgets and financial reports upon request by the Purchaser.
2. All reports shall be in writing, and when applicable, in the format specified by the Purchaser, and shall be supported by the Provider's records.

### **Q. PROVIDER RESPONSIBILITIES**

1. The Provider agrees to meet state and federal service standards and applicable state licensure and certification requirements as expressed by state and federal rules and regulations applicable.
2. The Provider will cooperate with and provide information to the Purchaser to establish costs for reimbursement purposes, and/or for other purposes pursuant to services provided under this contract. Examples include Operating Budgets, Staffing Worksheets, etc.
3. The Provider will maintain a uniform double entry accounting system and a management information system compatible with cost accounting and control systems, in accordance with the Wisconsin DHSS Accounting Principles and Allowable Costs Policies Manual, unless this requirement is specifically waived. This requirement does not apply to general hospitals. Family group homes and adult family homes are allowed to use a simplified accounting system in lieu of this requirement.
4. Providers will transfer a client from a category of service to another only upon approval of the Purchaser.
5. If the Provider wishes to subcontract any service under this contract, a request must be submitted to the Purchaser who retains the right to disallow subcontracting of services at its discretion.
6. The Provider will do criminal background checks on all staff and employees in accordance with standards, will maintain up-to-date documentation, and will submit documentation to the Purchaser upon request.
7. The Provider will assure that all staff and employees will be adequately trained in accordance with standards, will maintain documentation of training, and will provide documentation to the Purchaser upon request.
8. The Provider will inform the Purchaser's Case Manager of any incident that does or may endanger the safety, health,

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- or well-being of the Client(s).
9. The Provider will assure the establishment of safeguards to prevent employees, owners, consultants, or members of the Board from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business, or other ties.
  10. The Provider certifies through signing this contract that neither the Provider nor any of its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency. In addition, the Provider shall notify the Purchaser within five business days in writing and sent by registered mail if the Provider or its principals receive a designation from the federal government that they are debarred, suspended, proposed for debarment, or declared ineligible by a federal agency. The Purchaser may consider suspension or debarment to be cause for unilaterally modifying the contract to a cost reimbursement basis or terminating the contract under L-1 above.

### **R. PROVIDER AUDIT REQUIREMENTS**

1. 2017 Wis. Act 59 amended Wis. Stats. §46.036(4)(c) (for DHS funding) and §49.34(4)(c) (for DCF funding) to increase the audit-report threshold from \$25,000 to \$100,000. The Provider must submit to the Purchaser an annual agency-wide audit if the total amount of annual funding provided by the Department of Health Services (DHS) (from any and all of DHS' divisions taken collectively) or the Department of Children and Families (DCF) (from any and all of DCF's divisions taken collectively) for all contracts is \$100,000 or more, unless the audit requirement is waived by the Purchaser or the appropriate state agency. In determining the amount of annual funding provided by DHS or DCF, the Provider shall consider both: (1) funds provided through direct contracts with DHS or DCF; and (2) funds from DHS or DCF, passed through another agency that has one or more contracts with the Provider.
2. The audit shall be in accordance with the generally accepted auditing standards, Wis. Stat § 46.036 (for DHS funding), Wis. Stat § 46.34 (for DCF funding), Government Auditing Standards as issued by the U.S. Government Accountability Office, and other provisions as specified in this contract. In addition, the Provider is responsible for ensuring that the audit complies with other standards and guidelines that may be applicable depending on the type of services provided and the amount of funding received. Please reference the following audit documents for complete information on the applicable audit requirements:
  - 2 Code of Federal Regulations (CFR), Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, Subpart F – Audits. This guidance also includes an Annual Compliance Supplement that details specific Federal agency rules for accepting Federal sub-awards.
  - The State Single Audit Guidelines (SSAG) expand on the requirements of 2 CFR Part 200 Subpart F by identifying additional conditions that require a State single audit. Section 1.3 of the SSAG lists the required conditions.
  - The Department of Health Services (DHS) Audit Guide is an appendix to the SSAG and contains additional DHS-specific audit guidance for those entities who meet the SSAG requirements. The audit shall also be in accordance with the following department standard:
  - The State Single Audit Guidelines if the Provider is local government that meets the criteria of 2 CFR Part 200 for needing an audit in accordance with the Register.
  - The Provider Agency Audit Guide for all other Providers.
3. Where an audit is not waived, the Provider is to submit to the Purchaser, within 180 days from the end of the Provider's fiscal year, the following: all audit schedules and reports, schedules of Jefferson County revenues and expenses by programs, a summary schedule of prior year findings and status of addressing the findings, Management Letter (or comparable), management responses and corrective action plan for each audit issue identified in the audit, and other applicable documents as requested by the Purchaser. Access to audit work papers and other audit materials will be provided to the Purchaser upon request. The Purchaser, upon request, will supply identification of funding sources making up contract payments to the Provider. Failure to comply with provider audit requirements will be considered to be a material breach of contract.
4. If the Provider fails to provide an audit that is due during the current contract service period for a prior year's service, the Purchaser may withhold an amount up to 5% of the amount due to the Provider each month for each audit that is late. If the audit is subsequently completed after the Purchaser withholds an amount, the Provider reserves the right to not refund any of these withholdings. If the provider's audit is due in a subsequent contract service period and the Provider fails to provide such an audit, the Purchaser may withhold an amount up to 5% of the amount due to the Provider for each month the audit is late, assuming the Provider and Purchaser have entered into a Purchase of Service Contract in that subsequent period. If the audit is subsequently completed after the Purchaser withholds an amount, the Provider reserves the right to not refund any of these withholdings.
5. Wis. Stats. §46.036(5m)(b)1. and §49.34(5m)(b)1., as amended by 2017 Wis. Act 59, contain the following provisions ("Retained-Surplus Provisions"): (a), if revenue under a contract for the provision of a rate-based service exceeds allowable costs incurred in the contract period, the contract shall allow the provider to retain from the surplus up to 5% of the revenue received under the contract (unless a uniform rate is established by DHS or DCF), in which case the contract shall allow the provider to retain the uniform percentage rate established by the rule; and (b) the retained surplus is the property of the provider.
6. Wis. Stats. §46.036(5m)(b)3. and §49.34(5m)(b)4., as amended by 2017 Wis. Act 59, contains the following provisions ("Surplus-Recovery Provisions"): (a) if on December 31 of any year the provider's accumulated surplus from all contract periods ending during that year for a rate-based service exceeds the allowable retention rate as described above, the provider shall provide written notice of that excess to all purchasers of the rate-based service; (b) upon the written request of the purchaser received no later than 6 months after the date of the notice; and (c) the provider shall refund the purchaser's proportional share of that excess.

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### S. CONDITIONS OF THE PARTIES' OBLIGATIONS

1. This contract is contingent upon authorization of state and federal laws. Material amendments or repeal affecting funding or authority of the applicable parties will terminate this contract.
2. Nothing contained in this contract shall be construed to supersede the lawful rights or duties of either party.
3. It is understood and agreed that this contract, including applicable attachments and amendments, is the complete and final agreement, superseding any oral agreements and negotiations which may conflict with the terms of the contract.
4. The Provider will notify the Purchaser in writing of all written complaints against the Provider.
5. The Provider shall maintain applicable licensing and certification status, and will furnish the Purchaser with copies of the most recent licensing and/or certification reports concerning the Provider. The Provider must notify the Purchaser if there is a change in licensure or certification status.
6. The Provider will furnish the Purchaser with its employer identification number. If the Provider does not have an employer identification number, the social security number of the Provider will be furnished.

### T. ATTACHMENTS TO THE CONTRACT

1. All Appendices and attachments to the contract are material components of the contractual agreement.
2. If services provided under the contract include the provision of Adult Alternate Care services (such as C.B.R.F. or AFH), the contract will include an "Attachment to the Contract for Adult Alternate Care". Services considered to be "Independent Living" (aka Supervised Apartments) will be covered under the "Attachment to the Contract for Independent Living Services".
3. If services provided under the contract include Children's Long-Term Waiver participants, the contract will also include an "Appendix B & Appendix C".
4. If services provided under the contract include Respite Care for individuals living in their own homes, and the respite care services are being provided by an Alternate Care Provider, the contract will include an "Attachment to the Contract for Respite Care Placements".
5. If services provided under the contract include the provision of specialized alternate care to children (Child Caring Institution, Child Group Home, or Treatment Foster Home), the contract will include an "Interagency Agreement" for certain alternate care services to children.

### U. LOBBYING CERTIFICATION

1. The Provider certifies through signing this contract that no federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence officers or employees of any agency, members of Congress, officers or employees of Congress, or employees of members of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence officers or employees of any agency, members of Congress, officers or employees of Congress, or employees of members of Congress in connection with this contract, the Provider shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying."
3. The Provider shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this contract was entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### V. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

1. The Provider certifies through signing this contract that neither the Provider nor any of its principals are debarred, suspended or proposed for debarment, declared ineligible, or voluntarily excluded from participating in state or federal assistance programs by any state or federal department or agency. In addition, the Provider shall notify the Purchaser within five (5) business days in writing by registered mail if the Provider or its principals receive a designation from the federal or state government that they are debarred, suspended, proposed for debarment, or declared ineligible by a state or federal agency. The Purchaser may consider suspension or debarment to be cause for revising or terminating the contract.

### W. H.I.P.A.A. COMPLIANCE

1. Statement of Intent
  - a. This section is intended to comply with the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA), including the HIPAA Privacy Rule, Security Rule, and Breach Notification Rule (references to HIPAA below are intended to incorporate HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and the Breach Notification Rule).
  - b. HIPAA establishes national standards to protect the privacy of health care information that is defined as "protected health information" (PHI). Additional confidentiality protections for healthcare information are found in other applicable federal and state laws.

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- c. Purchaser is a HIPAA “covered entity” and this section is intended to fulfill Purchaser’s obligation to enter into a business associate contract with its HIPAA “business associates.” This section covers the HIPAA requirements for a Provider that qualifies as a HIPAA “business associate” of the Purchaser. A Provider that is a HIPAA “covered entity” but that also qualifies as a business associate of the Purchaser is covered by this section. A Provider that is a HIPAA covered entity but not a business associate of Purchaser is not covered by this section but is still directly subject to HIPAA’s requirements.
- 2. HIPAA Regulatory Definitions – Terms used, but otherwise not defined, will have the meaning as defined in HIPAA.
  - a. Business Associate – A “business associate,” as defined under 45 CFR 160.013., generally includes a Provider that, on behalf of Purchaser, creates, receives, maintains, or transmits PHI for a function or activity regulated by HIPAA or that provides services for Purchaser that involve the use or disclosure of PHI.
  - b. Breach Notification Rule – The rule set out at 45 CFR Part 164, Subpart D.
  - c. Corrective Action Plan - a plan communicated by the Purchaser to the Provider for the Provider to follow in the event of any threatened or actual use or disclosure of any PHI that is not specifically authorized by this contract, or in the event that any PHI is lost or cannot be accounted for by the Provider.
  - d. Incident – a use or disclosure of PHI by the Provider or its subcontractor or agent not authorized by this Section or in writing by the Purchaser; a breach, a complaint by an individual who is the subject of any PHI created or maintained by Provider on behalf of Purchaser; and any Federal HIPAA-related contact. Also included in this definition a “Security Incident” which is defined as any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
  - e. Individual – Person who is the subject of PHI. Purchaser uses the term “client”.
  - f. Privacy Rule – The Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E. The Privacy Rule Standards protect PHI created, received, maintained, or transmitted for or on behalf of Purchaser.
  - g. Protected Health Information (PHI) – “Protected health information,” as defined under 45 CFR 160.103, generally includes individually identifiable health information in any form (e.g., written, oral, electronic), where such information relates to the past, present, or future physical or mental condition of an Individual, including information relating to the provision of or payment for health care. PHI in electronic form is also known as electronic PHI (e-PHI).
    - i. PHI includes the following information when associated with healthcare information unless “de-identified” per the Privacy Rule: client name; date of birth; address; telephone number; fax number; email address; social security number; medical record number; health plan beneficiary numbers; account numbers; certificate license numbers; vehicle identifier and license numbers; full-face photographic images; device identifiers and serial numbers; Web Universal Resource Locators (URL’s); Internet Protocol (IP) address numbers; and biometric identifiers including finger and voice prints and any other unique characteristic and/or code that may identify a client.
  - h. Security Rule – The Security Standards and Implementation Specifications, 45 CFR Part 160 and 164, Subpart C.
  - i. Secretary – The Secretary of the Department of Health and Human Services or a designee.
- 3. Obligations and Activities of Provider on Behalf of the Purchaser
  - a. Provider agrees: not to use or disclose PHI except as permitted or required by this contract or applicable state and federal laws; to use appropriate technical, administrative, and physical safeguards to protect the privacy and security of PHI as required by HIPAA and to prevent the use or disclosure of PHI in a manner that would violate any applicable state and federal laws or this Contract; to comply with the applicable requirements of the Security Rule; to mitigate, to the extent practicable, any harmful effect that becomes known to the Provider of a use or disclosure of PHI by the Provider in violation of the requirements of any applicable state and federal laws or this Contract; and to report to Purchaser any use or disclosure of PHI not provided for or by this Contract or applicable state and federal laws of which it becomes aware.
  - b. Provider agrees to ensure that any agent or subcontractor that creates, receives, maintains, or transmits PHI on behalf of Provider agrees to the same restrictions and conditions that apply to Provider with respect to PHI.
  - c. Provider agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from or created or received by Provider on behalf of Purchaser, available for the Secretary to determine Purchaser’s compliance with HIPAA. Provider agrees to immediately notify Purchaser of any such request from the Secretary and to provide Purchaser with copies of any materials provided to the Secretary. Provider also agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to Purchaser for inspection upon reasonable request.
  - d. Provider agrees to make PHI available in compliance with the Individual’s rights to access, amend, and receive an accounting related to the individual’s PHI. If provider receives a request for access, amendment, or an accounting of disclosures directly from a client, Provider agrees to notify Purchaser in writing of the request as soon as practicable but not later than seven (7) days after the date of the request.
  - e. Provider agrees to document disclosures of PHI and related information as would be required for Purchaser to respond to a request by a client for an accounting of disclosures of PHI and to make that documentation available within seven (7) days of a written request from Purchaser.
  - f. As of the effective date of the relevant regulations, Provider agrees to provide to Purchaser or a client, the information necessary to provide an accounting of disclosures of PHI for purposes of Treatment, Payment, Healthcare Operations, or other covered purposes through an Electronic Health Record.



## Jefferson County Human Services Department

- g. To the extent Provider is to carry out an obligation of Purchaser under the Privacy Rule, Provider agrees to comply with the requirements of the Privacy Rule that apply to Purchaser in the performance of that obligation.
- 4. Obligations and Activities of Purchaser
  - a. The Purchaser shall communicate to the Provider any restriction covered by the Purchaser's own HIPAA Notice of Privacy Practices. The Purchaser shall notify the Provider of any changes in, or revocation of, permission to use or disclose PHI, to the extent that such changes may affect Provider's use or disclosure of PHI. The Purchaser shall notify the Provider of any restriction that affects the use and disclosure of PHI. The Purchaser shall not request the Provider use or disclose PHI in a manner not permissible under HIPAA.
- 5. Permitted Uses and Disclosures by Provider
  - a. General Use and Disclosure – Except as Otherwise Limited under this Contract or HIPAA, Provider may use and disclose PHI as described below.
    - i. Provider Functions and Activities - Provider may use or disclose PHI to perform the contracted functions, activities, or services for or on behalf of Purchaser, if such uses or disclosures would not violate the Privacy Rule or the minimum necessary policies and procedures of Purchaser if done by Purchaser.
    - ii. A Provider so contracted may use PHI to provide Data Aggregation Services to Purchaser and may combine data with its other data to use for research, analytic, and similar purposes, provided that no client or Purchaser is identifiable.
  - b. Specific Use and Disclosure – Except as Otherwise Limited per this Contract or HIPAA, Provider may use and disclose PHI as described below.
    - i. Provider's Own Operations –
      - 1. Provider may use PHI for its own proper management and administration and to carry out its own legal responsibilities; and
      - 2. Provider may disclose PHI for its proper management and administration or to carry out its legal responsibilities provided that:
        - a. The disclosure is required by law; or
        - b. Provider obtains reasonable assurance from any person or entity to which Provider will disclose PHI that the person or entity will (i) hold the PHI in confidence and use or further disclose the PHI only for the purpose for which Provider disclosed PHI to the person or entity or as required by law; and (ii) promptly notify Provider of any instance of which the person or entity becomes aware in which the confidentiality of PHI was breached.
  - c. In its performance of the functions, activities, services, and operations described above, Provider will make reasonable efforts to use, disclose, and request only the minimum amount of Purchaser's PHI reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that Provider will not be obligated to comply with this minimum-necessary limitation if neither Provider nor Purchaser is required to limit its use, disclosure, or request to the minimum necessary. The phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act and its implementing regulations.
- 6. Notifications by Provider to Purchaser
  - a. Reporting of a Security Incident, Breach or Unauthorized Disclosures of PHI - Provider shall:
    - 1. Report to the Purchaser any actual or suspected breach of PHI, any Security Incident, and any use or disclosure of PHI that is in violation of this Contract or HIPAA, including incidents reported to Provider by its subcontractors or agents; and
    - 2. Report to Purchaser any client complaint related to HIPAA compliance.
  - b. Contents of Reports - Any report to Purchaser shall identify: (i) the nature of the unauthorized use or disclosure or client complaint; (ii) the PHI used or disclosed; (iii) who made the unauthorized use or disclosure; (iv) the identity, if known, of any individual who received PHI due to an unauthorized use or disclosure, or the description of where the PHI is believed to have been improperly sent, transmitted or utilized; (v) what Provider has or shall do to mitigate any effect of the use or disclosure; (vi) what corrective action Provider has taken or shall take to prevent future similar unauthorized use or disclosure of PHI; and (vii) such other information as Purchaser may reasonably request.
- 7. Term and Termination
  - a. Effective Term - This agreement shall be effective as of the date in the Contract Appendix A, and shall terminate when all PHI in any media or form is destroyed in a secure manner, returned to the Purchaser, or if not feasible to return or destroy, protections are extended to such information, in accordance with the termination provisions in this section.
  - b. Termination – If Purchaser becomes aware of a material breach of the terms of this section of the Contract by Provider or Provider's agent or subcontractor, Purchaser may:
    - i. Provide an opportunity for Provider within a 30-day period to cure the breach or end the violation and terminate this Contract if Provider does not cure or end within a time period set by Purchaser;
    - ii. Immediately terminate the Contract if the Provider has breached a material term and it is concluded by the Purchaser that cure is not possible; or if neither termination nor cure is feasible, report the violation to the Secretary.
  - c. Effect of Termination and Return or Destruction of PHI
    - i. Upon termination of this Contract, except as provided in paragraph 7.c.iii., Provider shall return or destroy as promptly as possible, but not more than 30 days after the termination of this contract, all PHI created, received or maintained, in whatever form or medium, on behalf of Purchaser,



including any copies of any Health Information or compilations derived from and allowing identification of such PHI or such Health Information. This provision shall apply to PHI that is in the possession of Provider and its subcontractors or agents.

- ## 8. Compliance with Electronic Transactions and Code Set Standards

- a. changes the definition, Health Information condition or use of a Health Information element or segment in a Standard;
- b. adds any Health Information elements or segments to the maximum defined Health Information Set;
- c. uses any code or Health Information elements that are either marked "not used" in the Standard's Implementation Specification(s) or are not in the Standard's Implementation Specification(s); or
- d. changes the meaning or intent of the Standard's Implementation Specification(s).

- a. **Regulatory References.** A reference in this Contract to a section in the Privacy, Security, or Breach Notification Rule means the section as in effect or as amended.
- b. **Amendment.** The parties agree to take such action to amend this Contract from time-to-time as is necessary for the Purchaser to comply with the requirements of the applicable state and federal laws. This agreement shall automatically amend to incorporate any change or modification of any state or federal law as of the effective date of the change or modification. The Provider agrees to maintain compliance with all changes or modifications to the applicable state or federal laws.
- c. **Survival.** The respective rights and obligations of the Provider shall survive the termination, cancellation, expiration or other conclusion of this Contract.
- d. **Interpretation.** Any ambiguity in this Contract shall be resolved to permit the Purchaser and the Provider to comply with the applicable state and federal laws.

1. By signature of the parties on the Contract it is agreed to comply with all terms and conditions as specified within the contract, as well as any and all attachments and amendments. This contract becomes null and void if the time between the Purchaser's authorized representative signature and the Provider's authorized representative signature on this contract exceeds sixty (60) days.

Company Name \_\_\_\_\_